

MATTHEW P. BERGMAN
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

MDL NO.: 3047

APPLICATION OF MATTHEW P.
BERGMAN FOR APPOINTMENT TO
PLAINTIFFS' STEERING
COMMITTEE

This Document Relates: ALL CASES

Pursuant to the Order Setting Initial Conference (ECF 2), the undersigned respectfully submits this Application for appointment to Plaintiffs' Steering Committee ("PSC"), and in support submits the attached Letter with Appendix A and B and the following Exhibits:

- **Exhibit 1:** *Curriculum Vitae* of Matthew P. Bergman with Judicial references; and
- **Exhibit 2:** Other Attorneys' Support for the PSC Application of Matthew P. Bergman

DATED this 20th day of October, 2022.

SOCIAL MEDIA VICTIMS LAW CENTER PLLC

By: /s/ Matthew P. Bergman
Matthew P. Bergman

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Matthew P. Bergman
Founding Attorney
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October 20, 2022

The Honorable Yvonne Gonzalez Rogers
U.S.D.C., Northern District of California
1301 Clay Street, Courtroom 1, 4th Fl.
Oakland, California 94612

Re: *In Re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, MDL No. 3047, Case No. 4:22-md-03047-YGR

Dear Judge Gonzalez Rogers:

I respectfully submit this Application for appointment to the Plaintiffs' Steering Committee for the above-referenced proceeding.

I founded Social Media Victims Law Center (SMVLC) in late 2021 in response to the mental health epidemic ravaging American youth to advocate for parents of children injured or killed through social media addiction and abuse. After 25 years of representing tort victims in complex product liability cases, I decided to devote the remainder of my legal career applying this litigation experience towards protecting children from becoming victims in the first place.

SMVLC is the only law firm in the country exclusively focused on children injured by social media. We currently represent 1,085 families in 49 states and Canada in cases involving completed suicide, accidental death, attempted suicide, suicidal ideation, eating disorders, severe anxiety and depression, racial profiling, sexual abuse, and sex trafficking. A breakdown of our clients by location, gender, and harms is attached as Appendix A.

In January 2022, SMVLC filed the first two cases in the country to invoke strict product liability against social media companies on behalf of an injured child: *Rodriguez v. Meta Platforms, Inc.*, No 3-22-cv-0401 (N.D. Cal 2022) (wrongful death action arising from suicide of 11-year-old child) and *Doffing v. Meta Platforms, et al*, No 1:22-00100 (D. Or. 2022) (personal injury and addiction claim involving 16-year-old child with eating disorders and anxiety). We currently have 45 cases pending throughout the United States involving children allegedly harmed or killed through social media use, including 19 in the Northern District of California.

SMVLC is recognized internationally for our expertise in legal, technical, and scientific issues relating to social media addiction and abuse among minors. For example, I was the only practicing attorney invited to participate in the First International Digital Wellbeing Summit last March in Dhahran, Saudi Arabia where academics, thought leaders, and computer scientists from around the world discussed the impact of social media on young people.

Background in Mass Tort Litigation

Prior to founding SMVLC, I was senior partner at Bergman Draper Oslund Udo, the leading Pacific Northwest law firm representing asbestos cancer victims in product liability litigation. I have represented over 750 mesothelioma victims with total recoveries over \$1 billion. I have tried over 25 cases to verdict and prosecuted over 30 appeals. I was appointed by the U.S. Trustee to the creditors' committees in thirteen asbestos bankruptcies, served as co-chair of one committee,

and was closely involved in the litigation and negotiations that created over \$20 billion in trust assets for asbestos victims.

In addition to my law practice, I serve as an adjunct professor at Lewis & Clark Law School where I teach litigation strategy to upper division students.

Qualifications for leadership role in MDL 3047

While not controlling, the following factors set forth in Fed. R. Civ. P. 23(g)(A)(1) for selection of class counsel provide a useful template from which the Court can consider my application for the Plaintiffs' Steering Committee in MDL 3047.

Work identifying and investigating potential claims. I established SMVLC in October 2021 as a stand-alone law firm organized around the unique legal, technical, and factual issues posed by social media litigation and the special needs of families impacted by the mental health injury or loss of a child. We employ web-based case management systems, information retrieval processes and client outreach protocols to exchange communications and documents with our (mostly) tech-savvy clients through email, text messaging, and various other means. Our forensic director, Jason Tanner, a former Secret Service Officer with experience in electronic discovery, works closely with parents to identify and preserve available social media and other data on their child's devices. Working with our vendor, we have developed a platform technology that will enable plaintiffs' counsel to amalgamate terabytes of data from multiple social media platforms and devices used by our clients' kids and identify dangerous use patterns and harmful content. To our knowledge, this technology is the first of its kind and will significantly benefit all plaintiffs in MDL 3047.

Since late 2021, SMVLC has engaged a roster of nationally renowned experts in the fields of adolescent psychology, neurology, algorithmic design, and computer sciences. These experts include, but are not limited to, Dimitri Christakis, MD, director of the Center for Child Health, Behavior and Development at Seattle Children's Research Institute; Jonathan Haidt, Ph.D., internationally known authority on social media's impact on adolescent mental health and author of *The Coddling of the American Mind*; and Matthew Nock, Ph.D., Chair of the Harvard Psychology Department and one of the leading authorities on suicide.

Together with my SMVLC colleagues, I have spent hundreds of hours connecting face-to-face with parents who have lost children through suicide or accidental death and with children who are struggling with social media addiction, eating disorders, bullying and sexual abuse. These highly personal and deeply emotional encounters are essential to understanding how young people interact with social media and the prodigious harms they and their families have sustained. Actual client contact is not only essential for effective trial workup but furnishes the basis for productive negotiations and successful resolution. Also significant for purposes of the MDL is the fact that I represent clients across the entire range of medically documented harms. Unlike most firms in MDL 3047, we do not limit our cases to specific harms or platforms and have cases pending against Facebook, Instagram, Snapchat, TikTok, YouTube, Discord, and Roblox.

As the Court aptly observed, prosecution of an MDL proceeding requires the highest levels of professionalism between opposing attorneys. Over the past ten months, I have worked closely with defense counsel from Meta, Snap, TikTok, and YouTube on issues involving discovery, scheduling, and data preservation. Consistent with my practice over the past 30 years, I have developed cordial working relationships with my defense colleagues and we have successfully and respectfully worked through many complex issues already. If appointed to the Plaintiffs' Steering Committee in MDL 3047, I will draw upon this reservoir of trust and mutual respect with defense counsel as we work through the challenges the parties will inevitably confront during this proceeding.

Experience in complex litigation. Product liability personal injury claims against social media platforms is an entirely new field of litigation and all counsel will have to draw from their prior experience. My 25 years of litigating complex multi-defendant cases with innovative legal theories and multifactor causation paths is directly applicable to the successful workup of bellwether cases in MDL 3047. Moreover, insofar as all harms alleged in these cases arise from minors' online activities, identification, retrieval, and analysis of electronic social media data is essential. SMVLC attorney Laura Marquez Garrett is a California and Washington attorney with 20 years' experience in the field of electronic discovery, including experience working with large corporations like the ones at issue in the MDL, and has been actively working on ESI discovery issues for the past eight months.

The Court should know that despite my 30 years of experience in complex product liability litigation, pioneering role in asserting product liability claims against social media platforms and national leadership in asbestos litigation, I have not previously occupied a leadership role in an MDL proceeding. Should the Court determine that my substantive knowledge and experience in social media product liability merits a position on the Plaintiffs' Steering Committee for MDL 3047, there will be others such as proposed Co-Leads Lexi Hazam of Lieff Cabraser and Christopher Seeger of Seeger Weiss who have extensive experience in MDL administration and a proven history of leading large and complex MDL proceedings to successful resolution.

Knowledge of applicable law. MDL 3047 is explicitly focused on product liability claims. The appellate decisions described in Appendix B demonstrate my proven track record of extending traditional product liability law theories to encompass unconventional products and non-traditional defendants. In establishing SMVLC, I drew upon this experience to address Section 230 of the Communications Decency Act which has posed a challenge to social media cases in the past. Over the past year, I have drafted legal briefs and lectured to legal audiences on Section 230, authored an article in Trial Magazine on social media litigation and will publish a law review article in January 2023 on relationship between Section 230 and product liability. This legal knowledge will be beneficial as plaintiffs confront dispositive motions from defendants seeking immunity under Section 230.

Resources Committed to the Litigation. My commitment to this litigation is both personal and pecuniary. On the personal side, this litigation provides a vehicle to apply the lessons I have learned over a 30-year legal career to make a positive difference in the lives of young people. I have divested my other legal responsibilities to pursue this work full-time and, if appointed to the Plaintiffs' Steering Committee, will devote substantially all of my time to this litigation. On the financial side, I have personally invested over \$3 million on these cases and will continue to assume all necessary financial obligations to see this litigation to fruition.

I appreciate the Court's consideration of my application.

SOCIAL MEDIA VICTIMS LAW CENTER

Matthew P. Bergman

Matthew P. Bergman

APPENDIX A

As of Monday, October 17, 2022, Social Media Victims Law Center has 1,085 active clients.

Breakdown of SMVLC Clients by Harm

(Percentages are of total clients (1,085), Harms are self-reported by client)

Suicide – 59 cases, 5.44%	Severe Depression – 963 cases, 88.76%
Attempted Suicide – 499 cases, 45.99%	Bullying – 856 cases, 78.89%
Self-Harm – 648 cases, 59.72%	Exchanged Explicit Photos – 501 cases, 46.18%
Suicidal Thoughts – 769 cases, 70.88%	Sexual Contact with Person Over 18 – 239 cases, 22.03%
Eating Disorders – 604 cases, 55.67%	Sex Trafficking – 54 cases, 4.98%
Unhealthy Concerns with Body Image – 889 cases, 81.94%	Sleep Deprivation – 721 cases, 66.45%

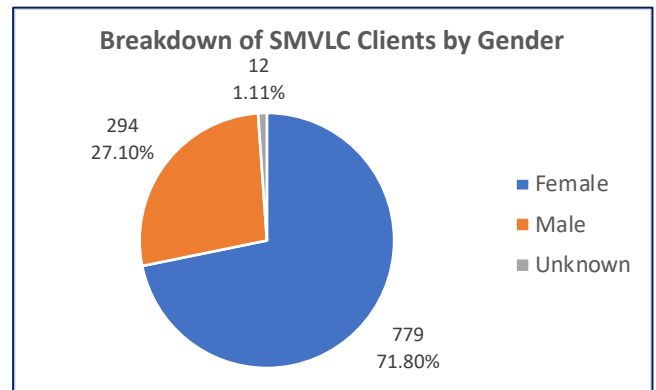
Statistics of SMVLC Suicide Cases

- Total Suicide Cases – **59** cases (5.44% of total active cases)
 - 44.07% of total suicide victims are Female (26 cases)
 - 55.93% of total suicide victims are Male (33 cases)
- Suicide Cases excluding Accidental Deaths – **43** cases (3.96% of total active cases)
 - 51.16% of these suicide victims are Female (22 cases)
 - 48.84% of these suicide victims are Male (21 cases)
- Accidental Death Cases – **16** cases (1.47% of total active cases)
 - 31.25% of Accidental Death victims are Female (5 cases)
 - 68.75% of Accidental Death victims are Male (11 cases)

Accidental Death cases encompass online challenge and drug overdose deaths.

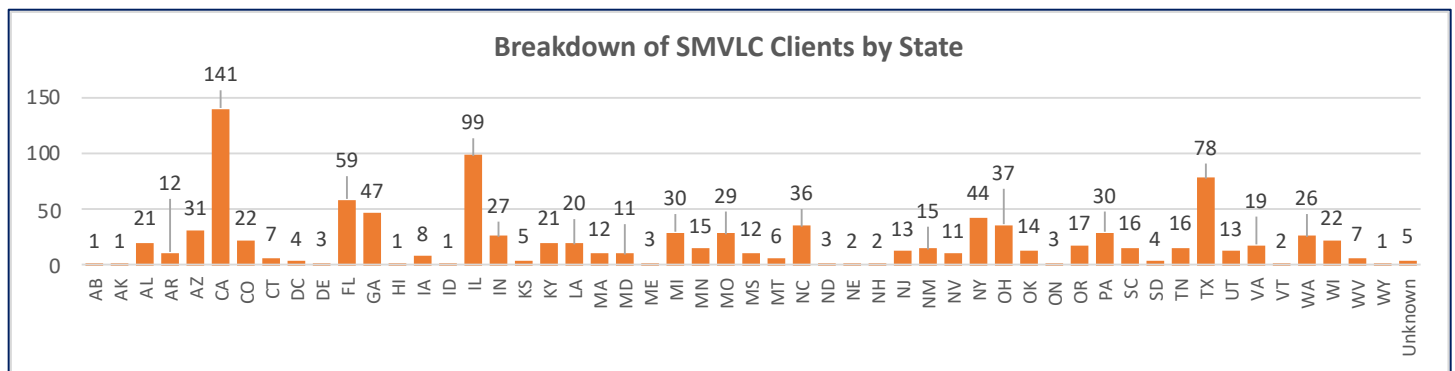
Breakdown of SMVLC Clients by Injured Child Gender

- 779 Injured Children are Female (71.80%)
- 294 Injured Children are Male (27.10%)
- 12 Injured Children – SMVLC does not yet know their gender (1.11%)



Breakdown of SMVLC Clients by State

- SMVLC has clients in every U.S. state except Rhode Island
- SMVLC has 1 client in Alberta, Canada and 3 clients in Ontario, Canada



APPENDIX B

Appellate Holdings in Bergman Product Liability Cases

Roemmich v. 3M Co., 21 Wn. App. 2d 939, 509 P.3d 306 (2022) (trial court erred in instructing jury to apply “but for” rather than “substantial factor” causation standard in multi-defendant toxic injury case and by permitting jury to consider employer’s negligent failure to instruct plaintiff on safe use of defendant’s product as a superseding cause of plaintiff’s injury).

Leren v. Kaiser Gypsum Co., Inc., 9 Wn. App. 2d 55, 442 P.3d 273 (2019) (trial court properly found that purchaser of assets of toxic product distributor succeeded to liabilities arising from products sold prior to asset purchase under “product line” successorship rule and that trial court correctly excluded evidence of employer failure to follow OSHA regulations governing use of defendant’s product in plaintiff’s workplace).

Rublee v. Carrier Corp., 192 Wn.2d 190, 428 P.3d 1207 (2018) (adopting “apparent manufacture” doctrine from Restatement (Second) Torts § 400 in holding that under reasonable consumer test jury could find that Pfizer became an apparent manufacturer of a third party’s product by displaying its logo on the product).

Estate of Brandes v. Brand Insulations, Inc., 197 Wn. App. 1043 (2017) (contractor who supplied toxic product to refinery to owed duty of care to family members of refinery worker who transported toxic fibers into his home environment on contaminated work clothes and owed a duty to warn bystanders of hazards arising from products it supplied).

McKenzie v. A.W. Chesterson Co., 277 Or. App. 728, 373 P.3d 150 (2016) (rejecting “bare metal defense” in holding Navy equipment manufacturer liable for harms arising out of asbestos-containing replacement parts supplied by a third party and installed on its equipment decades after its original manufacturer and sale).

Kennedy v. Saberhagen Holdings, Inc., 182 Wn. App. 1031 (2014) (evidence that plaintiff procured a single bag of toxic cement from a shipyard where defendant was alleged to be exclusive supplier raised reasonable inference that plaintiff was exposed to defendant’s product despite plaintiff’s total lack of knowledge regarding who manufactured or supplied the injurious product).

Montaney v. J-M Mfg. Co., Inc., 178 Wn. App. 541, 314 P.3d 1144 (2013) (toxic tort plaintiff need not offer a detailed recollection of facts surrounding the exposure defendant’s product to survive summary judgment).

Macias v. Saberhagen Holdings, Inc., 175 Wn.2d 402, 282 P.3d 1069 (2012) (modifying *Braaten* and *Simonetta* in holding that respirator manufacturer who never manufactured or supplied toxic products was liable for injuries arising from exposures plaintiff foreseeably sustained while cleaning the masks after use in toxic environments).

Simonetta v. Viad Corp., 165 Wn.2d 341, 197 P.3d 127 (2008) & *Braaten v. Saberhagen Holdings*, 165 Wn.2d 373, 198 P.3d 493 (2008) (Navy equipment manufacture not liable for exposures to toxic products installed on its equipment after manufacture delivery where manufacturer was not in chain of distribution of injurious products), abrogated by *Air & Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986 (2019).

Taylor v. Union Carbide Corp., 147 Wn. App. 1017 (2008) (non-exclusive supplier of raw asbestos used in manufacture of joint compound product was liable for injuries arising out of plaintiff's exposure to joint compound product despite lack of specific evidence plaintiff inhaled asbestos fibers asbestos fibers supplied by defendant).

Rochon v. Saberhagen Holdings, Inc., 140 Wn. App. 1008 (2007) (employer owed duty of care to protect family members of asbestos-exposed workers from "take home" exposures to asbestos products used in workplace).

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3 SAN FRANCISCO DIVISION

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5 ADDICTION/PERSONAL INJURY
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MDL NO.: 3047

7 APPLICATION OF MATTHEW P.
8 BERGMAN FOR APPOINTMENT AS
9 CO-LEAD COUNSEL OR PLAINTIFFS'
10 STEERING COMMITTEE

11 This Document Relates: ALL CASES

12 **EXHIBIT "1"**

13 **CURRICULUM VITAE OF MATTHEW P. BERGMAN**

14 DATED this 20th day of October, 2022.

15 SOCIAL MEDIA VICTIMS LAW CENTER PLLC

16 By: /s/ Matthew P. Bergman
17 Matthew P. Bergman

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MATTHEW P. BERGMAN

821 Second Avenue, Suite 2100
Seattle, WA 98104

LEGAL EXPERIENCE

Founding Attorney

SOCIAL MEDIA VICTIMS LAW CENTER, Seattle, WA | 2021–Present

- Represent 1,085 families of children injured by social media addiction
- Currently litigating over 40 cases in federal and state courts

Adjunct Professor of Law

LEWIS & CLARK LAW SCHOOL, Portland, OR | 2018–Present

- Teach litigation strategy to upper division law students

Of Counsel | 2022–Present, **Senior Partner** | 2001–2021, **Associate** | 1996–2000

BERGMAN DRAPER OSLUND UDO, Seattle, WA

- Representing toxic tort victims in state and federal courts
- Prosecuted 25 jury trials and obtained 30 reported appellate decisions
- Over \$1 billion in client recoveries
- Appointed to Creditor's Committee on 13 major bankruptcies, resulting in over \$20 billion in trust recoveries for asbestos victims.

Litigation Associate

HELLER EHRMAN WHITE & MCAULIFFE, Seattle, WA | 1991–1995

Law Clerk to the Honorable Bobby R. Baldock

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT | 1989–1991

Law Clerk

FEDERAL PUBLIC DEFENDER FOR THE DISTRICT OF OREGON | 1988–1989

Judicial Extern to the Honorable Diarmuid F. O'Scannlain

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT | 1987–1988

LEGAL PUBLICATIONS

Assaulting the Citadel of Section 230 Immunity: Product Liability & Social Media,
23 Lewis & Clark Law Review ____ (2023)

Social Media: An Unsafe Place for Kids, Trial Magazine, August 2022

Montesquieu's Theory of Government and the American Constitution,
18 Pepperdine Law Review 1

Dissent in the Judicial Process: Discord in Service of Harmony,
68 Denver U. Law Review 79

Status, Contract and History: A Dialectical View, 13 Cardozo Law Review 1

LEGAL HONORS

Learned Hand Award


AMERICAN JEWISH COMMITTEE | 2022


Above & Beyond Award

AMERICAN ASSOCIATION FOR JUSTICE | 2022

Distinguished Alumnus

LEWIS & CLARK LAW SCHOOL | 1989

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EDUCATION

Bar Admissions

Washington, 1991

Oregon, 1989

Lewis & Clark Law School

Portland, Oregon

J.D. *magna cum laude*

1989

Reed College

Portland, Oregon

B.A. Sociology

1986

JUDICIAL REFERENCES

Bobby R. Baldock

SENIOR UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT | (575) 625-2388

John B. Erlick

RETIRED KING COUNTY SUPERIOR COURT JUDGE | (206) 223-1669

Veronica Galvan

KING COUNTY SUPERIOR COURT JUDGE | (206) 477-1453

Paris K. Kallas

RETIRED KING COUNTY SUPERIOR COURT JUDGE | (206) 223-1669

Robert S. Lasnik

SENIOR UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON | (206) 370-8810

Ronald Leighton

RETIRED UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON | (253) 328-7837

Diarmuid F. O'Scannlain

SENIOR UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT | (503) 833-5380

Nicole Phelps

KING COUNTY SUPERIOR COURT JUDGE | (206) 477-1411

Jim Rogers

KING COUNTY SUPERIOR COURT JUDGE | (206) 477-1597

Barbara J. Rothstein

SENIOR UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON | (202) 354-3330

COMMUNITY SERVICE

American Jewish Committee Arabian Gulf Institute | WASHINGTON, DC

- Board member of organization focused on improving relations between Israel and Arab countries and deepening understanding between Muslims and Jews
- Member of delegation to Bahrain and United Arab Emirates in Fall 2022. Met with Cabinet officers, business, and thought leaders

American Security Project | WASHINGTON, DC

- Board member of bipartisan organization of retired flag officers focusing on national security impact of climate change

Lewis & Clark College | PORTLAND, OR

- Vice Chair, Board of Trustees
- Chair, Law School Board of Visitors

Masai Children's Initiative | MASSAI MARA, KENYA

- Founder & Sponsor, 2004-2014
- Established locally administered female literacy project in Maasai tribal communities
- Funded construction of primary and boarding schools for 350 Maasai girls
- Developed solar powered computer lab with internet connectivity and solar powered well to furnish potable water to school and neighboring villages

Mississippi Center for Justice | JACKSON, MS

- Board Member
- Oversee prosecution of litigation on voting rights, racial and economic justice, fair housing, and reproductive rights
- MCJ Represented Curtis Flowers in US Supreme Court and on remand secured dismissal of all charges in remand

Naval Historical Foundation | WASHINGTON, DC

- Board member of federally chartered nonprofit to preserve and honor legacy of Naval service

Tacoma Art Museum | TACOMA, WA

- Board member

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**UNITED STATES DISTRICT COURT
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**APPLICATION OF MATTHEW P.
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This Document Relates: ALL CASES

EXHIBIT "2"

I have the support of the individuals listed below, and I also support them for leadership roles:

- Christopher A. Seeger, Seeger Weiss (Co-Lead)
- Lexi Hazam, Lieff Cabraser (Co-Lead)
- Emily Jeffcott, Morgan & Morgan (Co-Lead)
- Joseph VanZandt, Beasley Allen (Co-Lead)
- Jennie Anderson, Andrus Anderson (Liaison)
- Ron Austin, Ron Austin Law (PSC)
- James Bilsborrow, Weitz Luxenberg (PSC)
- Paige Boldt, Watts Guerra (PSC)
- Tom Cartmell, Wagstaff Cartmell (PSC)
- Jayne Conroy, Simmons Hanly Conroy (PSC)
- Carrie Goldberg, C.A. Goldberg Victims' Right Law Firm (PSC)
- Kirk Goza, Goza & Honnold (PSC)
- Sin-Ting Mary Liu, Aylstock, Witkin, Kreis & Overholtz (PSC)
- Andre Mura, Gibbs Law Group (PSC)
- Emmie Paulos, Levin, Papantonio, Rafferty (PSC)
- Roland Tellis, Baron & Budd (PSC)
- Alexandra Walsh, Walsh Law (PSC)

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- Previn Warren, Motley Rice (PSC)
- Michael Weinkowitz, Levin, Sedran & Berman (PSC)

DATED this 20th day of October, 2022.

SOCIAL MEDIA VICTIMS LAW CENTER PLLC

By: /s/ Matthew P. Bergman

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